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WILSON SONSINI

Focus on Fintech

Welcome to Wilson Sonsini's *Focus on Fintech* newsletter. This quarterly newsletter provides ongoing analysis and commentary on regulatory developments impacting the fintech industry.

In this issue, our attorneys discuss a number of updates and developments from federal regulators, including those related to novel banking arrangements, misrepresentations in advertisements and marketing, the intersection of fintech and artificial intelligence, and other areas of increased scrutiny. We also discuss rule updates from the SEC, including the SEC's Cybersecurity Rule and its proposed reforms to the Internet Adviser Exemption. Finally, we wrap up this edition with some key litigation updates and our state law round-up, which discusses state commercial financing laws, California's Digital Financial Assets Law, and New York's "tightening of the belt" on crypto asset companies.

As an important reminder, the U.S. Department of the Treasury's Financial Crimes Enforcement Network's (FinCEN's) final regulations on Beneficial Ownership Information (BOI) Reporting Requirements are effective January 1, 2024. FinCEN has drafted a proposed rule (which has not yet been adopted) that would extend the compliance deadline for companies created on or after January 1, 2024, and before January 1, 2025, to 90 days. Please see our previous alert for more information.

Innovations in Banking

FedNow Launch

The Federal Reserve (the Fed) launched the FedNow Service on July 20, 2023. FedNow is an interbank instant payment system that gives banks and credit unions the ability to transfer and settle

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funds in real time, on any day and at any time. At its launch, the FedNow Service was available to 35 early adopter banks and credit unions, as well as the U.S. Department of the Treasury's Bureau of the Fiscal Service, with more participants expected to follow.

For more information on the FedNow launch and its impact, please see Wilson Sonsini partner Jess Cheng's recent TechCrunch article, "FedNow's legal terms contain a game changer for digital wallets and payment apps," and our client alert, "Money in 2023: What Tech Companies Need to Know About Instant Payments and FedNow."

Federal Reserve Issues Two Supervision and Regulation Letters on Novel Activities

Following its policy statement from January making clear that uninsured and insured banks supervised by the Fed are subject to the same limitations on activities, including novel banking activities such as crypto asset-related

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Innovations in Banking *(Continued from page 1)*

activities, the Federal Reserve Board issued two Supervision and Regulation Letters that are relevant to banks supervised by the Fed with respect to so-called "novel activities."

In SR 23-7, the Fed announced the creation of its Novel Activities Supervision Program (the Program) to "ensure that the risks associated with innovation are appropriately addressed" by Fed-supervised banks. The Program focuses on the following activities conducted by banks: complex, technology-driven partnerships with non-banks to provide banking services; crypto-asset-related activities; projects that use distributed ledger technology with the potential for significant impact on the financial system; and concentrated provision of banking services to crypto-asset-related entities and fintechs. The Fed further noted that the level and degree of supervisory scrutiny would be "risk-based," depending on a supervised bank's level of engagement in "novel activities."

SR 23-8/CA 23-5 provides guidance for state member banks in connection with certain activities involving "dollar tokens," which would seem to include stablecoins. Under SR 23-8, state member banks seeking to engage in the activities permitted for national banks under OCC Interpretive Letter 1174 (such as issuing, holding, or transacting in dollar tokens to facilitate payments) must first obtain a supervisory nonobjection from the Fed. Under the Fed's nonobjection process, the bank is required to demonstrate that it has controls in place to conduct the activity in a safe and sound manner.

CFPB Report Focuses on Payment Apps Issues for Military Families

In June 2023, the Consumer Financial Protection Bureau (CFPB) released its annual report focused on financial concerns facing military families. Building on earlier research and advisories regarding digital payment apps (as highlighted in our Q2 2023 issue), this report notes that digital payment apps can lead to a heightened risk of financial harm from fraud and identity theft.

The report highlights that fraud or other issues on digital payment apps may pose a particular risk of financial harm to servicemembers in part because this population tends to conduct more online transactions using digital payment apps when moving to a new duty station. The report provides three recommendations to payment app providers: (i) improve the safety and security of networks to prevent fraudulent activity; (ii) improve responsiveness in the event of fraud by working closely with all parties involved; and (iii) tailor reimbursement policies to recognize the unique experiences of military families.

Marketing Considerations

SEC Charges Investment Advisers with Mispresenting Hypothetical Performance and Other Marketing Rule Violations

The Securities and Exchange Commission (SEC) announced its first charges for violations of the amended Marketing Rule (Rule 206(4)-1 of the Investment Advisers Act of 1940, or Advisers Act) against a registered investment adviser that operates in the fintech industry, Titan Global Capital Management USA LLC. The Marketing Rule generally governs fraud in advertising and also includes specific requirements for certain types of advertisements, including performance advertising, endorsements and testimonials, and third-party ratings.

The SEC alleged that Titan used misleading and inadequate disclosures regarding hypothetical performance metrics and conflicting and misleading disclosures concerning the custody of Titan customers' crypto assets. The SEC also made other allegations related to the anti-fraud provisions and compliance with the policies and procedures requirements under the Advisers Act. For its violations of the Advisers Act, Titan agreed to a cease-and-desist order, a censure, a $192,454 disgorgement payment, prejudgment interest, and an $850,000 civil penalty.

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Marketing Considerations *(Continued from page 2)*

Following the charges against Titan, the SEC announced nine settlements related to Marketing Rule compliance. These settlements involved investment advisers advertising hypothetical performance via public websites without adopting and implementing policies and procedures required by the Marketing Rule. Gurbir Grewal, director of the SEC's Division of Enforcement, noted that hypothetical performance advertisements "may present an elevated risk for prospective investors whose likely financial situation and investment objectives don't match the advertised investment strategy."

FDIC Issues Another Cease-and-Desist Letter for Misleading Representations about Deposit Insurance

As part of its continued focus on false and misleading representations regarding deposit insurance, the Federal Deposit Insurance Corporation (FDIC) issued another cease-and-desist letter on August 4, 2023, to Unbanked, Inc. (Unbanked), a non-bank fintech company. In the letter, the FDIC focused on tweets from Unbanked referencing FDIC-insured crypto bank accounts, availability of FDIC insurance without a disclaimer that crypto assets are not FDIC insured, and other statements implying that FDIC insurance is available for cryptocurrency and that FDIC insurance would protect against cryptocurrency-related losses. Those statements are false and misleading because, as noted in the letter, FDIC insurance does not cover cryptocurrency and only protects against losses caused by the failure of an insured depository institution. The FDIC also demanded that Unbanked identify the insured depository institutions included in its advertisements that call out the availability of FDIC insurance, as required by 12 C.F.R. Part 328, Subpart B, which prohibits false or misleading marketing relating to FDIC insurance.

Use of Artificial Intelligence in Fintech

SEC's Proposed Rule on the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers

Prompted by the growing use of artificial intelligence (AI) and other predictive data analytics, the SEC proposed broad new rules for investment advisers and broker-dealers to address the conflicts of interest associated with their use of predictive data analytics and similar technologies. The proposed rules apply to the use of "covered technologies" in investor interactions that create a conflict of interest. The proposal defines a "covered technology" as "an analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes to interact with investors" and is designed to capture artificial intelligence, machine learning, and deep learning algorithms, among other technologies. Under the proposed rules, if an investment adviser or broker-dealer uses predictive data analytics or similar technologies in any interaction (not only in a recommendation), it must "eliminate or neutralize" any conflicts of interest that are present—it is not enough to merely disclose the presence of potential conflicts.

The SEC noted that it may be difficult or impossible for a firm to adequately test some covered technologies (such as those that utilize large language models or those licensed from a third party that does not provide a firm with sufficient insight into its functions) to determine whether a conflict of interest is present. However, the SEC emphasized that, as with other regulations, testing challenges would not relieve firms of their compliance obligations.

CFPB's Spotlight on Chatbots in Banking

In June 2023, the CFPB released an Issue Spotlight and Report on the widespread adoption of chatbots by financial institutions. CFPB Director Rohit Chopra noted that "[a] poorly deployed chatbot can lead to customer frustration, reduced trust, and even violations of the law." For example, the report notes that the use of complex chatbots that use large-language models (LLMs) could lead to consumers receiving insufficient or even inaccurate information, which puts companies using such chatbots at risk of violating various laws. Further, due to the sensitive nature of the information collected, the report cautions financial institutions using these features to take care to ensure that the information collected by the chatbot is secure from breach and intrusion.

Other Areas of Heightened Scrutiny

SEC Fines Advisory Firms for Custody Rule Violations

Following the SEC's proposed amendments to the Investment Adviser Custody Rule (Rule 206(4)-2 of the Advisers Act) earlier this year, the SEC announced settled charges against five investment advisers to private funds for failing to comply with the existing Custody Rule. The five firms failed to meet various requirements of the Custody Rule, including the requirement that the adviser deliver the fund's audited financials to investors annually on a timely basis and the requirement to maintain client assets with a qualified custodian. Some of these advisers (Apex, Bluestone, and Disruptive) also failed to promptly file the necessary related amendments to their Form ADVs with information regarding private fund audits (the Form ADV is required to be updated on an annual basis). For these violations, each firm agreed to cease and desist from violating the Custody Rule and Form ADV requirements and pay civil penalties.

SEC Risk Alert – Anti-Money Laundering Compliance Examinations of Broker-Dealers

The SEC's Division of Examinations (the Division) published a risk alert, "Observations from Anti-Money Laundering Compliance Examinations of Broker-Dealers," focusing on broker-dealers' obligations to comply with applicable anti-money laundering (AML) and economic sanctions laws and regulations. The Division had two general observations: (i) broker-dealer AML programs were frequently under-resourced, with appropriate levels of staffing a particular concern, especially at businesses where the same individuals handle both AML and sanctions compliance, and (ii) broker-dealers often inconsistently applied AML policies, procedures, and internal controls, resulting in less effective AML programs.

The Division also highlighted specific areas where it observed deficiencies related to broker-dealer AML testing, including AML testing that was: (i) not timely or not sufficiently documented; (ii) ineffective because of inadequate personnel training or lack of independence; or (iii) not properly tailored to the securities industry or the requirements of the Bank Secrecy Act. Some broker-dealers failed to collect required customer identification information or used systems that incorrectly categorized customers' identities as verified instead of flagging missing customer information. Finally, the Division found a lack of compliance with the Customer Due Diligence Rule and beneficial owner requirements. Similar weaknesses were observed in sanctions compliance programs.

CFTC Enforcement Signals Increased Scrutiny of DeFi Platforms

The Commodity Futures Trading Commission (CFTC) announced settled charges with three decentralized finance platforms that illegally offered trading in digital assets derivatives—Deridex, Opyn, and ZeroEx. Deridex and Opyn were each accused of offering swaps without registering as swap execution facilities or designated contract markets, failing to register as a futures commission merchant, and failing to adopt a customer identification program. All three platforms were charged with illegally offering leveraged and margined retail commodity transactions in digital assets. CFTC Commissioner Summer K. Mersinger voiced concerns that the Commission's enforcement activity "creates an impossible environment" for DeFi businesses to comply with the law, suggesting that existing regulations may lack the clarity necessary to promote the responsible and compliant development of technologies such as DeFi.

CFPB's Supervisory Highlights Report Focuses on Unfair, Deceptive, and Abusive Practices Across Various Consumer Financial Product Lines

On July 26, 2023, the CFPB released its Summer 2023 Supervisory Highlights report. The report describes the agency's key findings regarding unfair, deceptive, or abusive acts or practices across a host of financial products and services that span a wide range of areas, including information technology management, consumer reporting, mortgage origination and servicing, and payday and small dollar lending.

Among other efforts, this Supervisory Highlights report showcases the CFPB's efforts to assess the effectiveness of supervised institutions' information technology controls. The report thus serves as an important reminder to institutions that maintaining inadequate information technology controls—such as weak password-management controls, untimely software updates, or failing to implement multi-factor authentication or a reasonable equivalent—may cause or contribute to violations of law, such as

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Other Areas of Heightened Scrutiny *(Continued from page 4)*

the Gramm-Leach Bliley Act Safeguards Rules or federal and state prohibitions against unfair or deceptive acts or practices.

FinCEN Issues "Pig Butchering" Alert

FinCEN issued an alert to financial institutions and the broader public regarding a common virtual currency scam called "pig butchering." In this scam, criminals establish a trust relationship with their victims (referred to as "pigs"), convince them to invest money in fraudulent virtual currency schemes, and then take their entire investment, leaving the victims with nothing. According to FinCEN, while the scam is "perpetrated by criminal organizations based in Southeast Asia," U.S. victims have lost billions of dollars to these scams.

The alert provides financial institutions with 15 red-flag indicators for financial institutions, categorized as "behavioral," "financial," and "technical" red flags "to help detect, prevent, and report potential suspicious activity related to pig butchering." These red flags include:

1. "A customer with no history or background of using, exchanging, or otherwise interacting with virtual currency attempts to exchange a high amount of fiat currency from an existing or newly opened bank account for virtual currency or attempts to initiate high-value transfers to virtual asset providers (VASPs)";
2. "Accounts with large balances that are inactive or have limited activity begin to show constant, uncharacteristic, sudden, abnormally frequent, or significant withdrawals of large amounts of money being transferred to a [VASP] or being exchanged for virtual currency"; and
3. "A customer mentions that they are transacting to invest in virtual currency using a service that has a website or application with poor spelling or grammatical structure, dubious customer testimonials, or a generally amateurish site design."

Financial institutions and the broader public should generally be aware of this scam, and financial institutions should continue to file suspicious activity reports in accordance with the Bank Secrecy Act if they detect a "pig butchering" scam.

The SEC and NFTs

The SEC announced settled charges against two NFT issuers (Impact Theory and Stoner Cats) for allegedly conducting illegally unregistered offers and sales of securities in the form of "non-fungible tokens," or NFTs, in violation of Section 5 of the Securities Act of 1933 (the Securities Act). These two settlements are the SEC's first two public actions against NFT issuers under federal securities laws.

According to the SEC, while selling its "Founder's Keys" NFTs, Impact Theory often touted its managerial efforts and "encouraged potential investors to view the purchase of Founder's Keys as an investment into the business, stating that investors would profit from their purchases if Impact Theory was successful in its efforts." Similarly, the SEC alleged that Stoner Cats offered and sold its NFTs to the public to finance the production of its animated web series and, through its promotional efforts, created investor expectations of profits based on the company's efforts. Because of the marketing by both Impact Theory and Stoner Cats, among other things, the SEC found that the NFTs involved "investment contracts" under the *Howey* test and that the offering of the NFTs to the public was an unregistered securities offering. For more information, please see our client alert, "Not So NFTy: What the Impact Theory and Stoner Cats Enforcement Actions Could Mean for NFTs."

FTC, CFTC Go After Crypto Company, Charging Former Executive

On October 12, 2023, the Federal Trade Commission (FTC) announced a settlement with now-bankrupt Voyager Digital LLC. The FTC alleged in its complaint that Voyager falsely portrayed the platform as a safe alternative to traditional financial institutions and repeatedly advertised that consumer deposits were FDIC-insured. Shortly before filing for bankruptcy, Voyager's co-founder and CEO, Steven Ehrlich, sent a letter to consumers reiterating that the funds were protected up to $250,000, due to the funds being held by a banking partner. The FTC alleges that Voyager only revised its claims to specify that the funds were not protected in the event of Voyager's failure after declaring bankruptcy and receiving a cease-and-desist letter from the FDIC.

The proposed settlement prohibits Voyager from making misrepresentations about its services, obtaining consumer financial information by making false representations, and disclosing nonpublic personal information about consumers without express informed consent. Voyager agreed to a $1.65 billion judgment, which will be suspended in order to allow the company to return remaining assets to consumers via bankruptcy proceedings. While Voyager's claims may be settled, Ehrlich did not agree to the FTC's proposed settlement. The FTC's case against him will proceed in federal court. On the same day as the FTC's announcement, the CFTC filed a parallel action against Ehrlich, charging him with fraud and registration failures.

Rule Updates

New SEC Cybersecurity Rule

The SEC approved final rules requiring that public companies disclose material cybersecurity incidents and information regarding their cybersecurity risk management, strategy, and governance. The SEC noted that cybersecurity risks have risen as the digitalization of registrants' operations, remote work, the ability of criminals to monetize cybersecurity incidents, the use of digital payments, and the reliance on third-party service providers for information technology services have all increased. The SEC highlighted the need for consistent disclosure practices that allow investors to evaluate registrants' exposure to material cybersecurity risks and their ability to manage those risks. For more information on these new rules, please see our client alert.

SEC Proposes Reforms for Internet Investment Advisers

The SEC proposed amendments to rule 203A-2(e) under the Advisers Act, which allows investment advisers that meet certain conditions to register federally with the SEC even if they do not satisfy the assets under management threshold for federal registration (the Internet Adviser Exemption). Among other changes, the proposed amendments eliminate the existing de minimis exception, which permits advisers to operate under the Internet Adviser Exemption if they have fewer than 15 non-internet clients in a 12-month period. Under the proposed amendments, the Internet Adviser Exemption would only be available to investment advisers who provide advice exclusively to clients through an operational interactive website. The proposed amendments also (i) include an express requirement that investment advisers have an "operational interactive website" at all times, as compared to the existing Internet Adviser Exemption, which requires an "interactive website," but does not expressly require that the website be operational at all times, and (ii) require that the investment adviser provides advice to more than one person.

FTC Seeks Comments on Proposed "Junk Fees" Rule

On October 11, 2023, the FTC announced a proposed rule that would prohibit a broad range of "junk fees" in consumer goods and services. Specifically, the proposed rule would generally prohibit the omission of mandatory fees from advertised prices, including, for example, convenience fees associated with financial services. The FTC anticipates the possibility of providing certain exclusions from the proposed rule, including for some financial products where the total price cannot practically be determined, and seeks comment on this issue. If finalized, violations of the proposed rule could result in civil penalties of up to $50,120 per violation.

CFPB Announces Proposed Personal Financial Data Rights Rule to Accelerate Open Banking

On October 19, 2023, the CFPB announced a proposed rule that would, among other things, provide consumers the right to access and port their financial information between banks and other financial service providers and restrict the use of such information by certain entities to that which is "reasonably necessary" to offer the requested product and service.

The proposed rule also seeks to move the financial services market away from "risky" data collection practices, such as screen scraping, and toward the use of developer interfaces (e.g., APIs). The CFPB is proposing to apply the rule to entities who are Regulation Z card issuers, Regulation E financial institutions, and products or services that facilitate payments from a Regulation E account or a Regulation Z account (e.g., consumer-facing entities involved in facilitating the transactions). CFPB Director Chopra stated that he intends to roll out final rules by Fall 2024. Interested parties may submit comments on or before December 29, 2023.

Litigation Updates

Federal Court Says SEC Wrong to Deny Grayscale's Bitcoin ETF Proposal

Grayscale, a leading crypto asset manager, previously filed an application with the SEC for a spot bitcoin ETF that would track the price of bitcoin and allow retail investors to gain exposure to the asset. The SEC rejected the application, citing a lack of proper mechanisms to detect, investigate, and deter fraud and market manipulation.

Following the SEC's rejection, Grayscale appealed the decision and the D.C. Court of Appeals ruled in Grayscale's favor, stating that the SEC failed to adequately explain its reasoning when denying Grayscale's proposed bitcoin ETF. The court noted that the SEC has approved two bitcoin futures exchange-traded products, which met the fraud deterrence standard cited in the SEC's decision to reject the spot bitcoin ETF. Accordingly, the court concluded that the two similarly situated products, the spot bitcoin ETF and bitcoin futures ETF, were treated differently without proper justification. The parties have 45 days to appeal to decision, after which the court may instruct the SEC to approve or revisit the application, which could still be rejected. However, if it were approved, the product would allow retail investors to gain exposure to Bitcoin through a brokerage account without needing to hold the asset themselves.

Class Action Against Uniswap Dismissed

The U.S. District Court for the Southern District of New York (SDNY) dismissed a class action lawsuit against Uniswap Labs and several related parties. The plaintiffs alleged that they lost money trading in "scam tokens" available on the Uniswap trading platform, seeking rescission of the purportedly unlawful contracts with the defendants, and alleging that Uniswap Labs was an unregistered securities exchange or broker-dealer facilitating the scam token trades. The plaintiffs further alleged that the Uniswap defendants offered or sold tokens that were unregistered securities in violation of the Securities Act.

The court found that the trading platform's smart contracts were collateral to the scam token activity and that the harm to the plaintiffs was caused and facilitated by the token issuers, not the underlying platform. Accordingly, the SDNY did not agree that Uniswap had acted as an unregistered exchange or as an unregistered broker-dealer. The court also found that, in creating and coding the exchange, the defendants were simply facilitating the transactions and that the plaintiffs failed to show that the defendants sold, promoted, and/or solicited the scam tokens directly to the plaintiffs.

Federal Court Allows Challenge to CFTC Rescission of No-Action Relief for Political Futures Market

The U.S. Court of Appeals for the Fifth Circuit issued a decision permitting PredictIt, an online prediction market, to challenge the CFTC's decision to rescind a No-Action Letter (NAL) that allowed PredictIt to operate its futures market without registration under federal law. The NAL originally issued was premised on the market operating for educational and research purposes, as opposed to economic ones. However, the CFTC rescinded the NAL, claiming that PredictIt failed to operate the market in compliance with the NAL.

As a result of the Fifth Circuit's decision, PredictIt will be granted a preliminary injunction on the CFTC's decision while the lower district court determines whether the agency's decision to withdraw the NAL was arbitrary and capricious. A ruling by the district court may provide more clarity on the regulation of political and financial prediction markets. Such a ruling may also have a broader impact on the judicial review of no-action relief due to the fact that currently, the federal circuit courts are split on the issue of whether revocation of a NAL constitutes "final agency action" that can be subject to court review.

State Round-Up

More States Enact Commercial Financing Disclosure Laws

Until recently, the state regulatory landscape regarding commercial financing transactions, such as sales-based financing (e.g., merchant cash advance), asset-based financing (e.g., factoring transactions), and more traditional commercial financing transactions (e.g., commercial open-end and closed-end loans), was relatively limited, with only California, New York, Utah, and Virginia enacting specific laws. Generally, the states that regulate these activities require certain disclosures to be provided to the recipient and, in certain states, that the commercial financing provider obtains a license or registration from the relevant state regulator.

One of the purposes of these commercial financing laws is to combat unfair and deceptive practices related to commercial financing transactions by requiring a standardized set of disclosures that include: (i) the total amount of funds provided to the recipient; (ii) the total amount to be paid to the commercial financing provider; (iii) the total dollar cost of the commercial financing transaction; (iv) the manner, frequency, and amount of each payment; and (v) whether there are any costs or discounts associated with any prepayment under the commercial financing transaction.

Recently, Connecticut, Florida, and Georgia enacted similar commercial financing laws. Florida and Georgia's commercial financing laws are effective January 1, 2024, and Connecticut's commercial financing law is effective July 1, 2024. Several other states—Illinois, Kansas, Maryland, Missouri, New Jersey, North Carolina, and Texas—currently have commercial financing bills in their respective legislative process.

California's Digital Financial Assets Law

On October 13, 2023, California Governor Gavin Newsom signed into law California Assembly Bill 39, Digital Financial Assets Law (DFAL). DFAL will regulate "digital financial assets" and require companies engaged in a "digital financial asset business activity" to obtain licenses from the California Department of Financial Protection and Innovation (DFPI), subject to certain exceptions, similar to New York's BitLicense. With the DFAL, California becomes the third state following New York's lead, after Louisiana, in establishing a licensing regime specific to crypto assets. DFAL goes into effect on July 1, 2025, but some of the obligations arising from this new law will not be clear until a forthcoming rulemaking process is complete. Please see our recent alert, "Incoming: California's Digital Financial Assets Law Dropping July 1, 2025," for more information.

New York Seeking to Crack Down on Crypto Asset Companies

The New York Department of Financial Services (NYDFS) issued two advisories (Proposed Updates to Guidance Regarding Listing of Virtual Currencies and General Framework for Greenlisted Coins) to all entities licensed by the NYDFS to engage in a virtual currency business activity, as well as a press release on the NYDFS's "ongoing initiative to strengthen DFS oversight of virtual currencies," including a short discussion about the two advisories.

As part of the Proposed Updates to Guidance Regarding Listing of Virtual Currencies, the NYDFS requested comments by October 20, 2023, regarding its proposed coin-listing and delisting standards and policy framework. The proposed updates require crypto asset companies that wish to self-certify coins without NYDFS's approval to create a coin-listing policy that includes "all steps involved in

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State Round-Up *(Continued from page 8)*

reviewing and approving coins for listing" that are tailored to the company's specific business model. Among other requirements, the coin-listing policy must be approved by the company's board of directors, annually reviewed, and include a risk assessment related to consumer impact and the safety and soundness of the crypto asset company.

Similarly, the coin-delisting policy must include "all steps involved in removing support for a coin," tailored to the company's specific business model. Among other requirements, the coin-delisting policy must be approved by the crypto asset company's board of directors, annually reviewed, and include notice requirements for the crypto asset company's customers.

The General Framework for Greenlisted Coins states that New York-licensed crypto asset companies are not required to obtain the NYDFS's approval before listing coins that are already included on New York's Greenlist, which is a list of crypto assets that the NYDFS has approved for sale and trading. However, such crypto asset companies must still provide the NYDFS with advance notice before listing Greenlisted coins, and have a "DFS-approved coin-delisting policy." As part of this update, the NYDFS also removed dozens of coins that were previously included on its Greenlist, including Ripple's XRP and Dogecoin. The only remaining Greenlisted coins in New York are Bitcoin, Ethereum, and a handful of stablecoins (Gemini Dollar, GMO JPY, GMO USD, Pax Gold, Pax Dollar, and PayPal Dollar). These updates reflect a "tightening of the belt" on crypto asset companies licensed by the NYDFS.

Select Publications

Wilson Sonsini Alert
Incoming: California's Digital Financial Assets Law Dropping July 1, 2025
November 14, 2023

Wilson Sonsini Alert
FinCEN Releases Proposed Rule Designating CVC Mixing as a "Primary Money Laundering Concern"
November 7, 2023

***TechCrunch* Article**
FedNow Legal Terms Contain a Gamechanger for Digital Wallets and Payment Apps
September 26, 2023

Wilson Sonsini Alert
Not So NFTy: What the Impact Theory and Stoner Cats Enforcement Actions Could Mean for NFTs
September 19, 2023

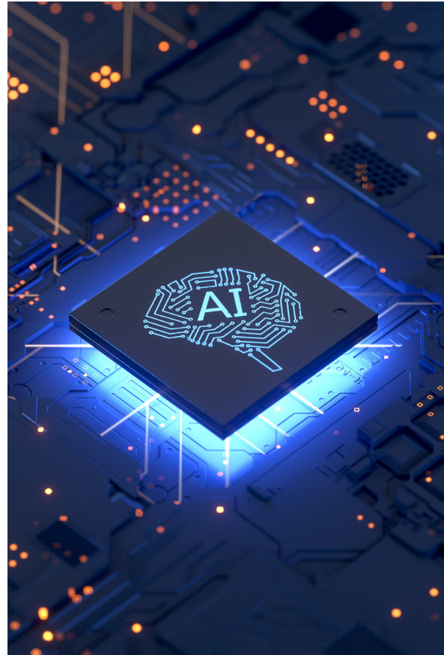
Wilson Sonsini Alert
Two New Rulings from the SDNY with Mixed Messages for Crypto: Potential Implications for Regulation of the Crypto Industry
September 7, 2023

Wilson Sonsini Alert
Treasury and IRS Release Proposed Regulations Regarding Reporting Requirements for Digital Asset and Cryptocurrency Transactions
August 28, 2023

Recent Fintech Practice Highlights

ABA/Wilson Sonsini Webinar – The New Frontier in Payments and Banking Services: A Chat with Leading Legal Practitioners
On September 21, fintech and financial services partner Jess Cheng hosted a webinar discussing how innovation is transforming the way money moves and key legal considerations with Evis Daum, Chief Counsel at Federal Reserve Financial Services; Robert Gonzalez, General Counsel at Mercury; Derek Schwede, Head of Legal at Modern Treasury; and Michelle Gitlitz, General Counsel at Flexa. The webinar examined key legal considerations stemming from the evolution of technology in payments and banking services.

ABA Business Law Fall Meeting CLE Program – Money Meets Intelligence: Legal and Practical Considerations Applying AI to Payments
On September 8, fintech and financial services partner Jess Cheng hosted a panel discussing key ethical and legal considerations in the use of AI with payments that featured panelists Donald Kossmann, Distinguished Engineer at



Microsoft; Ivy Gupta, Payments Product Counsel at Plaid; and Scott Buell, General Counsel at Forter. The CLE focused on practical applications of AI in payments and navigating the ethical and legal landscape from a practitioner's perspective.

Wilson Sonsini Represents SpotOn in Sale of Business Unit to Shift4
On October 2, 2023, SpotOn, one of the leading software and payment companies in the United States, announced that it has reached a strategic agreement to sell its sports and entertainment business to Shift4, while retaining select assets to support the growth of its restaurant business. Wilson Sonsini Goodrich & Rosati represented SpotOn in the transaction.

Wilson Sonsini Advises Circle on Strategic USDC Relationship Transactions with Coinbase
On August 21, 2023, Circle and Coinbase announced the next chapter in their work together, unlocking the next phase of utility for USDC. Having established itself as one of the most widely adopted and trusted digital dollars, USDC has enabled millions of users around the world with the ability to quickly access and move money at scale, growing from an idea to the second-largest stablecoin in the world. Wilson Sonsini Goodrich & Rosati advised Circle in the transaction.

The following attorneys have editorial oversight of Wilson Sonsini's *Focus on Fintech*.
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